



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

*[Handwritten signature]*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,832	01/11/2001	Joseph A. Horton	MCRVT-023C	8538
33197	7590	11/18/2003	EXAMINER	
STOUT, UXA, BUYAN & MULLINS LLP			THALER, MICHAEL H	
4 VENTURE, SUITE 300			ART UNIT	PAPER NUMBER
IRVINE, CA 92618			3731	
DATE MAILED: 11/18/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/758,832	HORTON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael Thaler	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 25 September 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 147-162 is/are pending in the application.  
4a) Of the above claim(s) 160 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 147-159, 161 and 162 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 25 September 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) 25,27 . 6)  Other: \_\_\_\_ .

Art Unit: 3731

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Sep. 25, 2003 has been entered.

Claim 160 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 23.

The disclosure is objected to because of the following informalities: It is unclear how the "ball 76" and "claw 78", described on page 33 lines 8-9 of the specification, acts to cut the strand. In claim 56, line 4, "in to" should be "into". Appropriate correction is required.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The claimed term "advancer" should appear in the specification.

Art Unit: 3731

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the apparatus for cutting defined in claim 161 which is an apparatus to delivering an electrical current defined in claim 162 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claims 148 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 9, there is no antecedent basis for "the third catheter".

Claims 147, 156-159, 161 and 162 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balko et al. (4,512,338) in view of Guglielmi et al. (5,122,136). Balko et al., in figure 7, show delivery catheter 36 and intravascular member 34 but fail to disclose an advancer apparatus and a releasable connection. However, Guglielmi et al. teaches that an intravascular member 28 may be deployed within a blood vessel by using an advancer

Art Unit: 3731

apparatus 10 and a releasable connection 22 between the intravascular member and the advancer apparatus. This arrangement has the self-evident advantage of enabling easy and reliable deployment of the intravascular member without having to deploy the advancer apparatus into the blood vessel. It would have been obvious to include these features in the Balko et al. system so that it too would have this advantage.

Claims 148-155 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balko et al. (4,512,338) in view of Guglielmi et al. (5,122,136) as applied to claims 147, 156-159, 161 and 162 above, and further in view of Massoud et al. ("Endovascular Treatment of Fusiform Aneurysms with Stents and Coils: Technical Feasibility in a Swine Model"). As to claim 148, Balko et al. fail to disclose a plurality of catheters. However, Massoud et al., in the paragraph labeled "Aneurysm Treatment" on page 1955, teach that a first catheter (the angiographic sheath), a second catheter (the guiding catheter) and a third catheter (the microcatheter) should be used to deploy a implantable device (the platinum coils) within a blood vessel. This arrangement has the apparent advantage of guiding the implantable device through narrow and tortuous blood vessels. Using first, second and third catheters to deploy the Balko et al. intravascular member in order to obtain this advantage

Art Unit: 3731

would have been obvious. As to claims 149-155, Balko et al. fail to disclose retaining an embolus member within a vessel wall defect by the intravascular member. However, Massoud et al. teach that an embolus member may be so retained (the paragraph under the heading "Purpose" on page 1953 and the paragraph under the heading "Aneurysm Treatment" on page 1955) apparently in order to occlude the vessel wall defect (aneurysm). It would have been obvious to insert an embolus member within the vessel wall defect and retain it by the intravascular member in the Balko et al. procedure so that the vessel wall defect described by Balko et al. would be occluded as well. As to claim 152, Massoud et al. teach advancing the embolus delivery catheter through the intravascular member into the vessel wall defect, as indicated by the phrase "through the mesh of the stent into the aneurysm" near the middle of the paragraph under the heading "Aneurysm Treatment" on page 1955.

Claims 147, 156 and 159 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Limon (5,476,505). Limon discloses delivery catheter 34, intravascular member 10 positionable within the delivery catheter 34 (since it is within distal end opening 44 of catheter 34 as described in col. 4, lines 1-6) and advancer 32, which, when rotated relative to delivery catheter 34, advances intravascular

Art Unit: 3731

member 10 laterally out of the distal end opening 44 of delivery catheter as described in col. 4, lines 51-60, the intravascular member 10 being connected to advancer 32 by way of a releasable connection (at aperture 42). Alternatively, it would have been obvious that member 34 is a delivery catheter since it delivers the intravascular member 10 to the target site in the blood vessel. As to claim 156, lines 15-17, blood flows through the flow channel in intravascular member 10 while it remains connected to advancer apparatus 32 as indicated in col. 4, lines 57-62.

Claims 148-155 are rejected under 35 U.S.C. 103(a) as being unpatentable over Limon (5,476,505) in view of Massoud et al. ("Endovascular Treatment of Fusiform Aneurysms with Stents and Coils: Technical Feasibility in a Swine Model"). As to claim 148, Limon fails to disclose a plurality of catheters. However, Massoud et al., in the paragraph labeled "Aneurysm Treatment" on page 1955, teach that a first catheter (the angiographic sheath), a second catheter (the guiding catheter) and a third catheter (the microcatheter) should be used to deploy a implantable device (the platinum coils) within a blood vessel. This arrangement has the apparent advantage of guiding the implantable device through narrow and tortuous blood vessels. Using first, second and third catheters to deploy the Limon intravascular member in order to

Art Unit: 3731

obtain this advantage would have been obvious. As to claims 149-155, Limon fail to disclose retaining an embolus member within a vessel wall defect by the intravascular member. However, Massoud et al. teach that an embolus member may be so retained (the paragraph under the heading "Purpose" on page 1953 and the paragraph under the heading "Aneurysm Treatment" on page 1955) apparently in order to occlude the vessel wall defect (aneurysm). It would have been obvious to use the make the vessel wall defect of Limon an aneurysm, insert an embolus member within the vessel wall defect and retain it by the intravascular member so that it is positively retained therein in view of this teaching in Massoud et al.

Applicant's arguments filed Sep. 25, 2003 have been fully considered but they are not persuasive for the reasons set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone numbers for the

Art Unit: 3731

organization where this application or proceeding is assigned are (703)872-9306 for regular communications and (703)872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht  
November 13, 2003



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731